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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ALBERT DYTCH,

Plaintiff,

vs.

NAMASTEY PATIO LLC; SHU CHEN  
CHANG, Trustee of the HONG CHI CHANG  
AND SHU CHEN CHANG REVOCABLE  
LIVING TRUST;

Defendants.

) No.

) **COMPLAINT ASSERTING DENIAL OF**  
) **RIGHT OF ACCESS UNDER THE**  
) **AMERICANS WITH DISABILITIES ACT**  
) **FOR INJUNCTIVE RELIEF,**  
) **DECLARATORY RELIEF, DAMAGES,**  
) **ATTORNEYS' FEES AND COSTS (ADA)**

**I. SUMMARY**

1. This is a civil rights action by plaintiff ALBERT DYTCH ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Namastey Patio Nepalese and Indian Cuisine  
5500 College Avenue  
Oakland, CA 94618  
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against NAMASTEY PATIO LLC and SHU CHEN CHANG, Trustee of the HONG

1 CHI CHANG AND SHU CHEN CHANG REVOCABLE LIVING TRUST (hereinafter  
2 collectively referred to as “Defendants”), pursuant to Title III of the Americans with  
3 Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”) and related California statutes.

4 **II. JURISDICTION**

5 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA  
6 claims.

7 4. Supplemental jurisdiction for claims brought under parallel California law –  
8 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

9 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

10 **III. VENUE**

11 6. All actions complained of herein take place within the jurisdiction of the United  
12 States District Court, Northern District of California, and venue is invoked pursuant to 28  
13 U.S.C. § 1391(b), (c).

14 **IV. PARTIES**

15 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or  
16 persons), firm, and/or corporation.

17 8. Plaintiff suffers from muscular dystrophy. As a result, he is substantially limited  
18 in his ability to walk, has limited dexterity, and must use a wheelchair for mobility.  
19 Consequently, Plaintiff is “physically disabled,” as defined by all applicable California and  
20 United States laws, and a member of the public whose rights are protected by these laws.

21 **V. FACTS**

22 9. The Facility is open to the public, intended for non-residential use, and its  
23 operation affects commerce. The Facility is therefore a public accommodation as defined by  
24 applicable state and federal laws.

25 10. Plaintiff lives approximately five miles from the Facility and visited the Facility  
26 on or about May 10, 2024 to have lunch with his wife. During his visit to the Facility, Plaintiff  
27 personally encountered barriers (both physical and intangible) that interfered with, if not  
28 outright denied, Plaintiff’s ability to use and enjoy the goods, services, privileges and

1 accommodations offered at the Facility. These barriers include, but are not necessarily limited  
2 to, the following:

- 3 a) To enjoy the warm weather, Plaintiff and his wife wanted to sit on the  
4 outdoor dining patio, under an umbrella. The ramp down to the only  
5 available shaded table was blocked by a table and chairs located at the  
6 bottom of the slope, which was occupied by a large party of senior  
7 citizens. Plaintiff had to ask these other diners to interrupt their meal, get  
8 up from the table, and step aside so the waiter could move the tables and  
9 chairs out of the way to let Plaintiff pass by, which was embarrassing.
- 10 b) The waiter also had to move the table where Plaintiff wanted to sit to  
11 create sufficient clear space between the tables and umbrellas for  
12 Plaintiff to wheel to his seating space, which was frustrating.
- 13 c) Plaintiff needed to use the restroom but would have been unable to  
14 transfer safely from his wheelchair to the toilet, which had uneven grab  
15 bars. This was inconvenient and uncomfortable.
- 16 d) Plaintiff could not use the sink in the restroom to wash his hands, which  
17 were sticky after eating, because the sink was housed in a cabinet that  
18 lacked sufficient knee and toe clearances, preventing him from pulling  
19 his wheelchair close enough to reach the faucet.

20 11. There may exist other barriers at the Facility which relate to Plaintiff's  
21 disabilities, and he will seek to amend this Complaint once such additional barriers are  
22 identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to  
23 his disabilities removed to afford him full and equal access.

24 12. Plaintiff has visited the Facility on multiple previous occasions, including other  
25 dates within the two years preceding the filing of this lawsuit, but does not presently recall the  
26 exact dates of his earlier visits. During his earlier visits, Plaintiff encountered some of the same  
27 barriers and brought them to the attention of Facility staff, to no avail.

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1           13. Plaintiff was, and continues to be, deterred from visiting the Facility because  
2 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and  
3 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.  
4 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility  
5 once the barriers are removed.

6           14. Defendants knew, or should have known, that these elements and areas of the  
7 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to  
8 the physically disabled. Moreover, Defendants have the financial resources to remove these  
9 barriers from the Facility (without much difficulty or expense), and make the Facility  
10 accessible to the physically disabled. To date, however, Defendants refuse to either remove  
11 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

12           15. At all relevant times, Defendants have possessed and enjoyed sufficient control  
13 and authority to modify the Facility to remove impediments to wheelchair access and to  
14 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for  
15 Accessible Design. Defendants have not removed such impediments and have not modified the  
16 Facility to conform to accessibility standards. Defendants have intentionally maintained the  
17 Facility in its current condition and have intentionally refrained from altering the Facility so  
18 that it complies with the accessibility standards.

19           16. Plaintiff further alleges that the (continued) presence of barriers at the Facility is  
20 so obvious as to establish Defendants' discriminatory intent. On information and belief,  
21 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere  
22 to relevant building standards; disregard for the building plans and permits issued for the  
23 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the  
24 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'  
25 property continues to exist in its non-compliant state. Plaintiff further alleges, on information  
26 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the  
27 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

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VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of “Full and Equal” Enjoyment and Use

17. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

18. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

19. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal enjoyment” and use of the goods, services, facilities, privileges and accommodations of the Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

20. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

21. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

22. Here, Plaintiff alleges that Defendants can easily remove the architectural barriers at the Facility without much difficulty or expense, that the cost of removing the architectural barriers does not exceed the benefits under the particular circumstances, and that Defendants violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

23. In the alternative, if it was not “readily achievable” for Defendants to remove the Facility’s barriers, then Defendants violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

24. Plaintiff alleges on information and belief that the Facility was designed and constructed (or both) after January 26, 1993 – independently triggering access requirements under Title III of the ADA.

25. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

26. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.<sup>1</sup>

Failure to Make an Altered Facility Accessible

27. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

28. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

29. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

30. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

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<sup>1</sup> Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.



40. Defendants' aforementioned acts and omissions denied the physically disabled public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

41. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

42. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory minimum damages of \$4,000 for each offense.

43. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

### VIII. THIRD CLAIM

#### Denial of Full and Equal Access to Public Facilities

44. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

45. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

46. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

47. Plaintiff alleges the Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

48. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

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**IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Declaratory relief finding that Defendants violated the ADA for the purposes of Unruh Act damages.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>2</sup>
5. Interest at the legal rate from the date of the filing of this action.
6. For such other and further relief as the Court deems proper.

Dated: May 20, 2024

MOORE LAW FIRM, P.C.

/s/ Tanya E. Moore

Tanya E. Moore

Attorney for Plaintiff

Albert Dytch

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<sup>2</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

**VERIFICATION**

I, ALBERT DYTCH, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: May 20, 2024

/s/ Albert Dytch

Albert Dytch

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore

Tanya E. Moore, Attorney for  
Plaintiff, Albert Dytch